



Ninety – Sixth Legislature – Second Session – 2000  
**Introducer's Statement of Intent**  
**LB 931**

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**Chairperson:** Senator David M. Landis  
**Committee:** Banking, Commerce, and Insurance  
**Date of Hearing:** January 18, 2000

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 931 would amend various sections of Nebraska's version of Revised Article 9 (Secured Transactions) of the Uniform Commercial Code to adopt clarifying and clean-up changes approved by in 1999 the uniform law commissioners in the official text of Revised Article 9. These changes constitute the equivalent of a "Revisor's Bill" offered by the uniform law commissioners.

Revised Article 9 was submitted to the states in 1998 and was adopted in Nebraska with the enactment of LB 550 (Landis) in 1999 (operative July 1, 2001). Nebraska was one of the first states to adopt Revised Article 9, which also meant that these clarifying and clean-up amendments from the uniform law commissioners actually appeared after passage of LB 550.

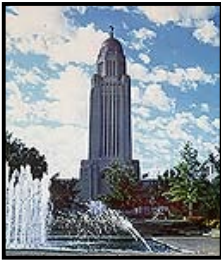
LB 931 would also amend a transition section of Revised Article 9 to enact provisions which were inadvertently omitted from Nebraska's enactment of Revised Article 9.

#### CLARIFYING AND CLEAN-UP PROVISIONS

The clarifying and clean-up changes from the uniform law commissioners are as follows:

##### 1. Indication of Collateral in Financing Statement

Section 14 would amend Revised Section 9-504 because Revised Article 9 inadvertently changed the requirements for indicating collateral in a financing statement. Under former Article 9 particular words that were insufficient as a "description" of collateral for purposes of a security agreement because they did not "reasonably identify" the collateral nevertheless sufficed as an "indication" of collateral and satisfied the notice function of a financing statement. This section would amend Revised Section 9-504 as recommended by the uniform law commissioners to provide that a financing statement sufficiently indicates the collateral if (but not "only" if) the financing statement provides a description pursuant to Revised Section 9-108. The latter section provides an evidentiary test applicable to security agreements that was not intended to be applied to financing statements.



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#### 2. Priority of Future Advances v. Lien Creditor

Sections 5 and 6 would amend Revised Sections 9-317 and 9-323 as recommended by the uniform law commissioners to jointly clarify situations where a security interest is intended to be subordinate to the rights of a lien creditor. (A lien creditor means (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like; (B) an assignee for benefit of creditors from the time of assignments; (C) a trustee in bankruptcy from the date of the filing of the petition; or (D) a receiver in equity from the time of appointment.) Section 5 would amend Revised Section 9-317 to clarify that a security interest (and not just “an unperfected” security interest) is subordinate to the rights of a person that becomes a lien creditor before the security interest is perfected or a financing statement is filed. Section 6 would amend Revised Section 9-323 to clarify that a security interest is subordinate to the rights of a person that becomes a lien creditor (and not just “while the security interest is perfected”) to the extent that the security interest secures an advance made more than 45 after the person becomes a lien creditor unless the advance is made without knowledge of the lien.

#### 3. Definition of “Chattel Paper”

Section 2 would amend Revised Section 9-102(11) as recommended by the uniform law commissioners to expand the definition of “chattel paper” in order to to accommodate the practice of leasing goods and accompanying software.

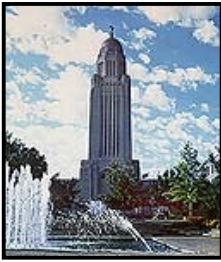
#### 4. Elimination of Erroneous Provisions and Insertion of Erroneously Omitted Provisions

Section 1 would amend Section 1-105 as recommended by the uniform law commissioners to insert omitted provisions to indicate that the law governing perfection, the effect of perfection or nonperfection, and the priority of “agricultural liens” as well as security interests is found in Revised Sections 9-301 to 9-307.

Section 3 would amend Revised Section 9-104 as recommended by the uniform law commissioners to insert an omitted “deposit” modifying an occurrence of “account” in provisions regarding control of deposit accounts.

Section 4 would amend Revised Section 9-210 as recommended by the uniform law commissioners to remove an erroneous “security” modifying “interest” from provisions regarding interests, but not “security” interests, in collateral.

Section 7 would amend Revised Section 9-331 as recommended by the uniform law commissioners to clarify that Revised Article 9 does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim, rather than just “an adverse” claim, under UCC Article 8 (Investment Securities).



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Section 8 would amend Revised Section 9-334 as recommended by the uniform law commissioners to clarify an internal reference.

Sections 9 and 15 would amend Revised Sections 9-336 and 9-705 as recommended by the uniform law commissioners simply to insert an omitted “the” in each section.

Sections 10 to 13 would amend Revised Sections 9-406 to 9-409 as recommended by the uniform law commissioners to insert erroneously omitted references to “assignments” and “transfers” of security interests.

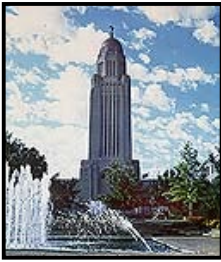
#### **TRANSITION PROVISIONS**

Section 16 would amend Revised Section 9-709 to insert “safe harbor” provisions for continuation statements which were filed centrally with the Secretary of State between July 1, 1999 and December 31, 1999, inclusive, to continue financing statements which were filed locally with the county prior to the conversion from local filing to central filing on July 1, 1999 as prescribed by LB 1321 (Landis) in 1998. The proposed safe harbor provisions in LB 931 would provide that such transitional continuation statements shall not be ineffective solely because they (1) failed to identify the original statement by county, file number, or the date and time of filing, (2) indicated the types or described the items of the collateral indicated in the financing statement instead of listing the collateral of the original filing, or (3) failed to include a statement that the original financing statement is still effective. These proposed safe harbor amendments to Revised Section 9-709 are a re-enactment of identical provisions enacted into former Section 9-412 by LB 552 (Landis) in 1999. Former Section 9-412 and Revised Section 9-709 are equivalent sections in former Article 9 and Revised Article 9, respectively. LB 550 of 1999 provided for both Revised Article 9 to be operative and former Article 9 to be repealed on July 1, 2001, which means that the safe harbor provisions presently in former section 9-412 will not survive past that date unless they are amended into Revised Section 9-709 as LB 931 proposes to do.

**Principal Introducer:**

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**Senator David M. Landis**



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